

**V.C.R.Crim.P. 520: Bail Before Verdict<sup>1</sup>**

(A) If the bail authority denies bail, the bail authority shall:

- (1) State the reasons for denying bail in writing or on the record and inform the defendant of his or her right to seek immediate review of the bail determination.
- (2) Because magisterial district courts are not courts of record, if the bail authority is a magisterial district judge, the reasons for denying bail shall be memorialized on the docket by inputting said reasons into the Magisterial District Judge System (“MDJS”).

**V.C.R.Crim.P. 529.1: Representation on Modification or Review of Bail Order**

(A) Upon either imposing bail conditions on the defendant or denying bail, the bail authority shall inform the defendant of his or her right to seek review of the bail determination pursuant to Pa.R.Crim.P. 529 governing Modification of Bail Prior to Verdict.

- (1) At the magisterial district court, the bail authority shall inform the defendant of his or her right to make an oral request for review of the bail determination.
- (2) The bail authority shall also inform the defendant of his or her right to hire counsel or apply for the services of the Venango County Public Defender’s Office for purposes of making a request for review of a bail determination.

(B) Either the bail authority considering the request for review or the judge of the court of common pleas presiding over a motion to modify may appoint counsel to represent the defendant when, in the bail authority’s or judge’s opinion, the interests of justice require it.<sup>2</sup>

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<sup>1</sup> This rule is intended to supplement Pa.R.Crim.P. 520 to make the defendant aware of his or her right to review.

<sup>2</sup> V.C.R.Crim.P. 520.1(C) is consistent with the Comment to Pa.R.Crim.P. 122 concerning appointment of counsel, which reads, in pertinent part, as follows:

Paragraph (A)(3) retains in the issuing authority or judge the power to appoint counsel regardless of indigency or other factors when, in the issuing authority’s or the judge’s opinion, the interests of justice require it.

## V.C.R.Crim.P 520.1: Bail Generally<sup>3</sup> and Hearing on Request for Review

- (A) All defendants shall be presumed bailable.<sup>4</sup> The bail authority may only deny bail if:<sup>5</sup>
- (1) the offense is a capital offense or an offense for which the maximum sentence is life imprisonment; or
  - (2) no conditions or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great.
- (B) A defendant who has been denied bail shall have the right to seek immediate review before either the issuing bail authority or a judge of the court of common pleas. A hearing on such review at which the defendant is present and after which the defendant has been informed of his right to be represented by counsel at said hearing, shall be held within 72 hours of such request for review.
- (a) If, after hearing, the request for review is denied and the hearing was presided over by a judge of the court of common pleas, then the judge of the court of common pleas shall state the reasons for denying such request in writing or on the record in open court.
  - (b) If, after hearing, the request for review is denied and the hearing is presided over by a magisterial district judge, then the magisterial district judge shall memorialize the reasons for denying such request on the docket of the magisterial district case pending against the defendant by inputting said reasons into the Magisterial District Judge System (“MDJS”) for the reason stated in V.C.R.Crim.P. 520.
- (C) No condition of release, whether nonmonetary or monetary, shall be imposed for the sole purpose of ensuring that a defendant remains incarcerated until trial.<sup>6</sup>

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<sup>3</sup> This rule restates existing United States and Pennsylvania Constitutional law and Pennsylvania Rules of Criminal Procedure relating to bail and again is intended to supplement Pa.R.C.P. 520.

<sup>4</sup> “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII; Pa. Const. art. 1 § 13.

<sup>5</sup> “All prisoners shall be bailable by sufficient sureties, unless for capital offenses or for offenses for which the maximum sentence is life imprisonment or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community when the proof is evident or presumption great.” Pa. Const. art. 1 § 14.

<sup>6</sup> Comment to Pa.R.Crim.P.524.

### **V.C.R.Crim.P. 528.3: Monetary Condition of Release on Bail**

- (A) Before imposing monetary conditions of release on bail on a defendant, the bail authority shall consider imposing Release on Recognizance (ROR) pursuant to Pa.R.Crim.P. 524(C)(1).
- (B) The bail authority shall not impose any monetary condition that results in the pretrial detention of the defendant solely because the defendant is financially unable to meet that condition.
- (C) Prior to imposing any monetary condition of release under Pa. R. Crim. P. 528, the bail authority must review the defendant's financial ability, including, but not limited to:<sup>7</sup>
  - (1) The defendant's:
    - (a) income and assets,
    - (b) living expenses including food, rent/mortgage, utilities, medical expenses, child support and familial obligations,
    - (c) debts, and
    - (d) any other hardships.
  - (2) The bail authority shall only consider the financial resources of the defendant and the defendant's legal spouse, not the defendant's friends or other family members.
- (D) The bail authority shall not impose a monetary condition of bail unless it finds that:
  - (1) no other condition or combination of conditions of release can ensure the defendant's appearance at trial.
  - (2) the defendant is able to afford to pay that amount.

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<sup>7</sup> Pa.R.Crim.P. 528(A)(2) requires that the bail authority consider the "financial ability of the defendant" prior to setting any monetary release condition. This amendment is intended to provide additional guidance to the Magisterial District Judge considering the "financial ability of the defendant."

(E) In making a determination as to whether the defendant is able to afford the amount of bail, the Court or issuing authority shall consider the following factors as relevant:

- (1) Whether the defendant has an income at or below 125% of the Federal Poverty Guidelines;
- (2) Whether the defendant receives income-based public assistance, including, but not limited to, Supplemental Nutrition Assistance Program (SNAP or food stamps), Medicaid, Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), veterans' disability benefits, or other state-based benefits;
- (3) Whether the defendant is or has within the past six months been homeless or resided in a mental health facility;
- (4) Whether the defendant is on his or her own unable to meet basic living expenses, including, but not limited to, food, rent/mortgage, utilities, medical expenses, transportation, and child support; and
- (5) Whether the defendant owns other assets including real or personal property.